

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

MARY C. ENGEL,

NO. CIV. S 03-2403 MCE KJM

Plaintiff,

v.

MEMORANDUM AND ORDER

MICHAEL BARRY, et al.,

Defendants.

-----oo0oo-----

Through the present action, Plaintiff Mary Engel ("Plaintiff") claims that Defendants Michael Barry, Deputy Brian Hammer, Deputy William Sowles, and Officer Scott Sparks (collectively, "Defendants") violated her civil rights during the course of searching her home and ultimately arresting her on felony child endangerment charges. Specifically, Plaintiff alleged federal claims under the Civil Rights Act of 1871, 42 U.S.C. § 1983 ("Section 1983"), including false arrest, false imprisonment, assault under color of law, assault and battery, cruel and unusual punishment, violation of right to counsel,

1 illegal search and seizure,¹ taking of personal property without
2 due process or just compensation, racial discrimination,
3 conspiracy, and negligence/deliberate indifference. In addition,
4 Plaintiff raised state claims of trespass to land, trespass to
5 chattel, and invasion of privacy.

6 On March 25, 2004, Defendants concurrently moved to dismiss
7 Plaintiff's claims and to strike Plaintiff's request for punitive
8 damages. In its Memorandum and Order dated August 17, 2004, the
9 Court granted Defendants' Motion to Dismiss Plaintiff's Section
10 1983 claims for false arrest, false imprisonment, cruel and
11 unusual punishment, violation of right to counsel, and deliberate
12 indifference for improper training as to probable cause for child
13 endangerment. See Mem. & Order, August 17, 2004. Also, the
14 Court granted Defendants' Motion to Strike punitive damages. Id.

15 In the current motion, Plaintiff is seeking summary judgment
16 or, in the alternative, summary adjudication as to her claims of
17 illegal search and seizure, due process violation, invasion of
18 privacy, deliberate indifference, conspiracy, trespass to land
19 and trespass to chattel. For the reasons set forth fully below,
20 Plaintiff's motion is denied.²

21 //

22 //

23 //

24
25 ¹While Plaintiff failed to list this cause of action in the
26 caption of her complaint, the Court notes that it is set forth in
the body of her complaint and, therefore, warrants this Court's
consideration.

27 ²Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

BACKGROUND

The Court has previously set forth a detailed factual background for this action in its Order of August 17, 2004, which is incorporated by reference and need not be reproduced herein. Mem. & Order 2-5, August 17, 2004.

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

Rule 56 also allows a court to grant summary adjudication on part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party seeking to recover upon a claim ... may ... move ... for a summary judgment in the party's favor upon all or any part thereof."); see also Allstate Ins. Co. v. Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

The standard that applies to a motion for summary adjudication is the same as that which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a), 56(c); Mora v.

1 ChemTronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

2 Under summary judgment practice, the moving party
3 always bears the initial responsibility of informing
4 the district court of the basis for its motion, and
5 identifying those portions of 'the pleadings,
6 depositions, answers to interrogatories, and admissions
7 on file together with the affidavits, if any,' which it
8 believes demonstrate the absence of a genuine issue of
9 material fact.

10 Celotex Corp. v. Catrett, 477 U.S. at 323(quoted Rule 56(c)).

11 If the moving party meets its initial responsibility, the
12 burden then shifts to the opposing party to establish that a
13 genuine issue as to any material fact actually does exist.

14 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
15 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.
16 253, 288-89 (1968).

17 In attempting to establish the existence of this factual
18 dispute, the opposing party must tender evidence of specific
19 facts in the form of affidavits, and/or admissible discovery
20 material, in support of its contention that the dispute exists.
21 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that
22 the fact in contention is material, i.e., a fact that might
23 affect the outcome of the suit under the governing law, and that
24 the dispute is genuine, i.e., the evidence is such that a
25 reasonable jury could return a verdict for the nonmoving party.

26 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52
27 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper
28 Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,
"before the evidence is left to the jury, there is a preliminary
question for the judge, not whether there is literally no
evidence, but whether there is any upon which a jury could

1 properly proceed to find a verdict for the party producing it,
2 upon whom the onus of proof is imposed." Anderson, 477 U.S. at
3 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20
4 L.Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the
5 moving party has carried its burden under Rule 56(c), its
6 opponent must do more than simply show that there is some
7 metaphysical doubt as to the material facts Where the record
8 taken as a whole could not lead a rational trier of fact to find
9 for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

11 In resolving a summary judgment motion, the evidence of the
12 opposing party is to be believed, and all reasonable inferences
13 that may be drawn from the facts placed before the court must be
14 drawn in favor of the opposing party. Anderson, 477 U.S. at 255.
15 Nevertheless, inferences are not drawn out of the air, and it is
16 the opposing party's obligation to produce a factual predicate
17 from which the inference may be drawn. Richards v. Nielsen
18 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),
19 aff'd, 810 F.2d 898 (9th Cir. 1987).

21 ANALYSIS

23 1. Illegal Search and Seizure

25 The Court notes that this Motion for Summary Adjudication
26 marks the first opportunity for the Court to examine Plaintiff's
27 claim of illegal search and seizure. Specifically, neither
28 Plaintiff nor Defendants had previously addressed this particular

1 claim in the papers filed with the Court. Accordingly, the Court
2 must first consider whether this claim is viable.

3 As explained in this Court's August 17, 2004, Memorandum and
4 Order, a Section 1983 action that would call into question the
5 lawfulness of a plaintiff's conviction or confinement is not
6 cognizable, and does not, therefore, accrue until and unless the
7 plaintiff can prove that her conviction or sentence has been
8 reversed on direct appeal. See Heck v. Humphrey, 512 U.S. 477,
9 486-87 (1994). Thus, when a plaintiff files a Section 1983
10 action, the court must determine whether "...a judgment in favor
11 of the plaintiff would necessarily imply the invalidity of his
12 conviction or sentence; if it would, the complaint must be
13 dismissed unless the plaintiff can demonstrate that the
14 conviction or sentence has already been invalidated." Id.

15 Plaintiff was convicted of misdemeanor child endangerment
16 and has failed to present any evidence that her conviction was
17 reversed or invalidated. Plaintiff made a motion to amend this
18 Court's August 17, 2004, Order barring a number of her claims on
19 the ground that her conviction had been "set aside" under
20 California Penal Code § 1203.4. While a 1203.4 petition for
21 expungement does act to relieve a defendant from most penalties
22 and disabilities resulting from the offense, it does not nullify
23 the conviction. See People v. Vasquez, 25 Cal. 4th 1225, 1230
24 (Cal. Sup. Ct. 2001). Rather, the final judgment of a conviction
25 is a fact; and its effect cannot be nullified even by a 1203.4
26 set aside. Id. The Court acknowledged that Plaintiff's
27 conviction had, indeed, been set aside under 1204.3, but clearly
28 held that her conviction was not expunged and still exists as a

1 legal reality. Mem. & Order 3, August 17, 2004. As a result,
2 Heck will act to bar Plaintiff's claim of illegal search and
3 seizure if it would imply the invalidity of her underlying
4 criminal conviction. See Mem. & Order 4, February 9, 2005.

5 The Ninth Circuit has spoken directly to whether a Section
6 1983 action alleging illegal search and seizure is cognizable
7 when it has resulted in a criminal conviction. See Harvey v.
8 Waldron, 210 F.3d 1008 (9th Cir. 2000). The Harvey court
9 expressly held that a Section 1983 claim for illegal search and
10 seizure does not accrue until the criminal charges upon which
11 that search is based have been dismissed or the conviction has
12 been overturned. Id. at 1015. The court went on to explain that
13 such a holding will avoid the potential for inconsistent
14 determinations on the legality of a search and seizure in civil
15 and criminal cases and will therefore fulfill the Heck Court's
16 objectives of preserving consistency and finality, and preventing
17 "...a collateral attack on [a] conviction through the vehicle of
18 a civil suit." Id.

19 Here, Plaintiff plead nolo contendere to the charge of child
20 endangerment. In order to receive and accept such a plea from an
21 accused, a factual basis for the plea must have been stated by
22 the prosecutor and agreed to by the defendant while under oath.
23 In order for Plaintiff to succeed on this Section 1983 claim
24 alleging an illegal search and seizure, the underlying factual
25 basis for her conviction would need to be largely, if not
26 entirely, invalidated. Destroying the factual basis upon which
27 her conviction rests would certainly imply the invalidity of her
28 conviction. Such a result is strictly prohibited by Heck.

1 Accordingly, Plaintiff's Section 1983 claim alleging illegal
2 search and seizure is dismissed with prejudice.

3
4 **2. Violation of Right to Due Process³**

5
6 In her complaint, Plaintiff avers, inter alia, that
7 Defendants deprived her of protections under the Fourth, Fifth,
8 Eighth, and Fourteenth Amendments. Pl's. Compl. 10-11.
9 Plaintiff is relying on 42 U.S.C. § 1983 to support her claim
10 that Officer Sparks and Officer Sowles deprived her of personal
11 property under color of law and without due process. In
12 pertinent part, 42 U.S.C. § 1983 provides that:

13 Every person who, under color of any statute,
14 ordinance, regulation, custom, or usage, of any State.
15 . . subjects, or causes to be subjected, any citizen of
16 the United States or other person within the
17 jurisdiction thereof to the deprivation of any rights,
18 privileges, or immunities secured by the Constitution
19 and laws, shall be liable to the party injured in an
20 action at law, suit in equity, or other proper
21 proceeding for redress.

22 In order to state a cause of action under Section 1983, a
23 plaintiff must show (1) that a person acting under color of state
24 law engaged in the conduct at issue, and (2) that the conduct
25 deprived the claimant of some right, privilege, or immunity
26 protected by the constitution or laws of the United States. See

27 ³Plaintiff characterizes this claim as one for extortion.
28 See Pl's. Compl. p. 1, 11, 12. Plaintiff claims that the threats
allegedly made to induce her to release the animals amounts to
extortion and, ultimately, to a violation of her constitutional
rights. Mere threats to do an unconstitutional act, however,
does not rise to the level of a constitutional wrong. Gaut v.
Sunn, 810 F.2d 923, 925 (9th Cir. 1987). Accordingly,
Plaintiff's claim is properly characterized as a deprivation of
her right to due process.

1 Leer v. Murphy, 844 F.2d 628, 632 (9th Cir. 1988). A person
2 deprives another of a constitutional right, within the meaning of
3 Section 1983, if he does an affirmative act, participates in
4 another's affirmative acts, or omits to perform an act which he
5 is legally required to do that causes the deprivation of which
6 the plaintiff complains. See id. at 633.

7 It is undisputed that Defendant Sparks and Defendant Sowles
8 acted under color of state law when they requested a release from
9 Plaintiff to surrender her animals to the custody of Animal
10 Control Services. Plaintiff's central allegation is that
11 Defendants Sowles and Sparks forced her to sign the release that
12 surrendered her animals to Officer Sparks. Plaintiff avers that
13 Defendants Sowles and Sparks applied threats of a felony animal
14 cruelty charge against Plaintiff as leverage which, she claims,
15 amounted to extortion and ultimately a deprivation of due
16 process.

17 Before summary adjudication can be granted in her favor,
18 Plaintiff has the burden of establishing that there are no issues
19 of material fact regarding whether Defendants were acting under
20 color of state law and deprived her of the animals without
21 satisfying the rigors of due process. While there is no issue
22 regarding whether Defendants were acting under color of state
23 law, there remain issues of material fact regarding whether
24 Plaintiff was deprived of her property without due process.

25 As support for the contention that Plaintiff's due process
26 rights were violated, Plaintiff makes the bare assertion that
27 Defendants "threatened her" with filing an animal cruelty charge.
28 Defendants rebut this assertion by referring to inconsistencies

1 in Plaintiff's testimony. At this early stage in the
2 controversy, the Court is not required to engage in a fact
3 finding mission to determine the validity of all claims.
4 Instead, Plaintiff's failure to resolve the issues of material
5 fact concludes the inquiry. Plaintiff's Motion for Summary
6 Adjudication of this claim is denied.

7
8 **3. Invasion of Privacy**
9

10 The constitution generally protects two kinds of privacy
11 interests. One is the individual interest in avoiding disclosure
12 of personal matters, and another is the interest in independence
13 in making certain kinds of important decisions. Whalen v. Roe,
14 429 U.S. 589, 599 (1977). Such basic matters as contraception,
15 abortion, marriage, and family life are protected by the
16 constitution from unwarranted government intrusion. See
17 generally Kelley v. Johnson, 425 U.S. 238, 244 (1970); Roe v.
18 Wade, 410 U.S. 113, 153 (1973); Eisenstadt v. Baird, 405 U.S. 438
19 (1972); Griswold v. Connecticut, 381 U.S. 479 (1965).

20 Here, Plaintiff is seeking redress for the invasion of her
21 privacy occasioned by Defendants' warrantless search of her home.
22 In the absence of probable cause and a valid search warrant,
23 search of a home is a per se violation of the Fourth Amendment of
24 the Constitution of the United States of America. See Coolidge
25 v. New Hampshire, 403 U.S. 443, 474-75 (1971). That said, the
26 warrant requirement may be waived based on a specific showing of
27 exigent circumstances. Id.

28 In support of her motion, Plaintiff categorically asserts

1 that her constitutional right to privacy was infringed by
2 Defendants' search of her home. In opposition, Defendants
3 contend that there were sufficient exigent circumstances to enter
4 and search her home. Specifically, Plaintiff contends that the
5 home was simply in disrepair whereas Defendants contend that the
6 home exhibited serious signs of neglect along with a pungent odor
7 which caused Defendants to fear for the safety of the children.
8 Clearly, issues of material fact exist as to whether there were
9 sufficient exigent circumstances to permit Defendants to conduct
10 a warrantless search of Plaintiff's residence. Accordingly,
11 Plaintiff's Motion for Summary Adjudication is denied.

12 13 **4. Deliberate Indifference to the Training of Defendants**

14
15 A municipality will only be found liable under section 1983
16 for a policy of inadequate training or supervision in limited
17 circumstances. See City of Canton v. Harris, 489 U.S. 378, 387
18 (1989). Inadequacy of training "may serve as the basis for
19 section 1983 liability only where the [municipal entity's]
20 failure to train amounts to deliberate indifference to the rights
21 of persons with whom the police come into contact." Id.
22 Moreover, a plaintiff alleging municipal liability under Section
23 1983 must show there is a direct causal link between a municipal
24 policy or custom and the alleged constitutional deprivation. Id.
25 at 385.

26 Plaintiff offers no evidence whatsoever to establish the
27 material facts underpinning her claim. Rather, she simply avers
28 that the County of Sacramento indifferently trained Defendants

1 resulting in a violation of her constitutional rights. The Court
2 cannot summarily adjudicate this claim in favor of Plaintiff when
3 there is a complete absence of evidence regarding whether the
4 County was deliberately indifferent to the rights of individuals.
5 Accordingly, Plaintiff's Motion for Summary Adjudication is
6 denied.

7 8 **5. Conspiracy**

9
10 A 42 U.S.C. § 1983 conspiracy claim generally requires a
11 predicate showing that a right guaranteed by law was violated.
12 See Giannini v. Real, 911 F.2d 354, 359 (9th Cir. 1990). No
13 conspiracy claim may survive where no liberty deprivation,
14 retaliation or invasion of privacy occurred.

15 Plaintiff has not yet established any deprivation of liberty
16 or other invasion of privacy to which the conspiracy claim can
17 attach. Plaintiff's Motion for Summary Adjudication of the
18 conspiracy claim is premature and must, therefore, be denied.

19 20 **6. Trespass to Land and Trespass to Chattel**

21
22 Plaintiff is seeking summary adjudication of her claims for
23 trespass to land and trespass to chattel. She argues that there
24 are no disputed facts regarding whether Defendants entered her
25 property without permission. Defendants rebut that they are
26 entitled to a qualified immunity which will absolutely shield
27 them of any liability for their actions in connection with the
28 search of Plaintiff's home.

1 In fact, Defendants are entitled to qualified immunity
2 unless a reasonable officer would have known that the conduct at
3 issue was unlawful under clearly established law. See Anderson
4 v. Creighton, 483 U.S. 635, 639 (1987). The determination of
5 whether a reasonable officer could have believed his conduct was
6 lawful is a determination of law that can be decided on summary
7 judgment only if the material facts are undisputed. See LaLonde
8 v. County of Riverside, 204 F.3d 947, 953 (9th Cir. 2000).

9 As discussed in detail above, there remain a number of
10 material facts in dispute. Accordingly, whether Defendants can
11 be held liable for the tort of trespass to land and trespass to
12 chattel is inappropriate for disposition on this summary
13 adjudication motion. Plaintiff's motion is, therefore, denied.

14
15 **CONCLUSION**
16

17 For the foregoing reasons, Plaintiff's Motion for Summary
18 Judgment or, in the alternative, Summary Adjudication is DENIED.

19
20 IT IS SO ORDERED.

21 DATED: December 15, 2005

22
23 

24 MORRISON C. ENGLAND, JR.
25 UNITED STATES DISTRICT JUDGE
26
27
28